

United States
Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion, Bankrupt.

COMMONWEALTH OF AUSTRALIA,
Petitioner,

vs.

F. E. BURNS, W. C. DAWSON, JAMES FOW-
LER and JOHN L. McLEAN, as Trustee in
Bankruptcy of PATTERSON-MacDON-
ALD SHIPBUILDING COMPANY, a Cor-
poration, Bankrupt,
Respondents.

ANSWER TO
Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of
Law, a Certain Order of the United States
District Court for the Western District
of Washington, Northern Division.

FILED

FEB 7 - 1923

F. D. MONGKTON,
CLERK

IRA BRONSON,
J. S. ROBINSON,
H. B. JONES,
Attorneys for Respondents.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 3960.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion, Bankrupt.

COMMONWEALTH OF AUSTRALIA,

Petitioner,

vs.

F. E. BURNS, W. C. DAWSON, JAMES
FOWLER and JOHN L. McLEAN, as
Trustee in Bankruptcy of PATTERSON-
MacDONALD SHIPBUILDING COM-
PANY, a Corporation, Bankrupt,

Respondents.

Answer to Petition for Review.

To the Honorable Judges of the United States
Circuit Court of Appeals for the Ninth Cir-
cuit.

Come now the respondents above named, and
without waiving, but specifically reserving to them-
selves any and all rights to move against the pro-
ceedings or demur to the petition herein for de-
fects or insufficiencies appearing upon the face
thereof, for their answer to the petition for review
respectfully show as follows:

I.

Referring to paragraph II of the petition, re-
spondents admit the presentation of a claim by the

petitioner against the bankrupt, and the disallowance thereof and the appeal for the order disallowing the same, as therein alleged, and deny each and every other allegation contained in said paragraph, and state that the entire facts relative thereto are as follows:

That upon the filing of said claim, the trustee filed written objections thereto upon several grounds, one ground of objection being that the said claim was unliquidated, and thereupon the petitioner applied to Hon. Jeremiah Neterer, United States District Judge for the Western District of Washington, Northern Division, for an order directing the manner of liquidating said claim; that thereupon, the District Judge, with the consent of the parties, entered an order designating and appointing Hon. C. R. Hawkins, Referee in Bankruptcy before whom the bankruptcy proceedings were and are pending, a Special Master to take evidence and make findings upon the questions arising out of petitioner's claim and the trustee's objections thereto, and submit his findings and conclusions to the District Court; that the Special Master proceeded in accordance with said order, and thereafter filed with the District Court his report finding that the bankrupt was not indebted to the petitioner, in any sum whatsoever, but that, on the contrary, it had overpaid the petitioner over and above all just charges due and owing at the time of bankruptcy by the sum of \$312,602.48; that said report of the Special Master was, after hearing and argument, duly approved and confirmed by the

District Judge upon which decision an appeal has been taken and is now pending; and respondents deny that petitioner has any valid claim whatsoever against the bankrupt.

II.

Referring to paragraph IV of said answer, respondents state that the said contract therein referred to, in addition to the general provision for arbitration, being paragraph eighteen thereof, also provided by paragraph seven that the owner should have the right to order extras, and that in case the parties should be unable to agree as to the effect of such alterations, omissions, additions and substitutions or the price thereof, the dispute should be determined as provided by paragraph eighteen thereof; that the Special Master ruled that certain questions of extras should be submitted to arbitration in accordance with the provisions of said paragraph eighteen, and thereupon respondents selected as their arbitrator, Frank E. Burns, and petitioner selected as its arbitrator, Frank Walker, and the two arbitrators so chosen selected as the third arbitrator, W. C. Dawson; that such selection and the arbitration held before said arbitrators was, in fact and in substance, a compliance with section twenty-six of the Bankruptcy Act; that the said C. R. Hawkins, who acted as Special Master, was and is also the Referee in Bankruptcy before whom the matter of the bankruptcy herein was and is pending.

III.

Referring to paragraph VII, respondents state

that by an agreement between the petitioner and the bankrupt dated March 31st, 1919, it was provided, section five:

“As regards certain questions of stores and equipment hitherto in dispute (such as awnings, canvas covers, certain deck equipment, engine-room tools, compasses, binnacles, sidelights, etc.), it is now agreed that the question whether the cost of these items, or any of them, is to be paid by the owners or contractors, shall be decided by reference to Mr. Fowler, Lloyd’s Surveyor at Seattle, whose decision shall be binding upon both parties.”

That the said Mr. Fowler, referred to in said agreement, is the same person as James Fowler, respondent, herein, and that the arbitration proceedings before him were had and the award rendered by him was made under and pursuant to such contract; that said matters had been submitted to James Fowler pursuant to said contract, and the said arbitration proceedings were pending before him, at the time of the adjudication of bankruptcy herein.

IV.

Referring to paragraph IX of said petition, respondents state that the petitioner expressly consented and agreed that the amounts asked and allowed to the arbitrators as compensation were just and reasonable for the services rendered by them.

WHEREFORE, respondents pray that the petition for review herein be denied.

F. E. BURNS,
W. C. DAWSON,
JAMES FOWLER,

JOHN L. McLEAN, As Trustee in Bankruptcy of Patterson-Macdonald Shipbuilding Company, a Corporation,
Respondents.

By IRA BRONSON,
J. S. ROBINSON,
H. B. JONES,
Attorneys for Respondents.

United States of America,
State of Washington,
County of King,—ss.

H. B. Jones, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the respondents above named, and has signed the foregoing answer on their behalf, being duly authorized thereto; and that he has read said answer and makes oath that the statements therein contained are true as he verily believes.

H. B. JONES.

Subscribed and sworn to before me this 23 day of January, 1923.

[Seal]

W. L. GRILL,
Notary Public in and for the State of Washington,
Residing at Seattle.

Service of the within answer admitted this 22d day of Jan., 1923.

CORWIN S. SHANK,
Atty. for Petitioner.

[Endorsed]: Answer to Petition for Revision,
etc. Filed Jan. 26, 1923. F. D. Monckton, Clerk.
By Paul P. O'Brien, Deputy Clerk.